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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN CARLSEN,

Defendant and Appellant.

F057450

(Super. Ct. No. VCF150697)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tulare County. James Hollman, Judge.

Thomas M. Singman, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Vartabedian, Acting P.J., Wiseman, J., and Poochigian, J.

## STATEMENT OF THE CASE

On April 30, 2008, appellant, Brian Carlsen, pled no contest to grand theft (Pen. Code, § 487, subd. (a), count 1).<sup>1</sup> The trial court granted the prosecutor's motion to reduce the allegation from a felony to a misdemeanor pursuant to section 17. The complaint alleged a prior prison term enhancement. Appellant pled no contest to a consolidated felony allegation of receiving stolen property (§ 496, subd. (a)). Appellant also pled no contest to four misdemeanor allegations. At the change of plea hearing, the court noted it had the probation report and placed appellant on probation. The court advised appellant he had a right to appeal within 60 days of the court's order.

After a number of continuances, a hearing was conducted on March 30, 2009 concerning the amount of victim restitution. The court ordered restitution of \$1,250 to the victim. On April 7, 2009, appellant filed a notice of appeal without obtaining a certificate of probable cause.

An order suspending imposition of sentence and granting probation is considered a final judgment. (*People v. Douglas* (1999) 20 Cal.4th 85, 91 (*Douglas*).) In general, an appealable order that is not appealed becomes final and binding. It may not be attacked by an appeal from a later, appealable order or judgment. (*People v. Ramirez* (2009) 159 Cal.App.4th 1412, 1420-1421.) Orders made after the grant of probation are generally appealable under section 1237 as orders made after entry of judgment affecting the substantial rights of the party. (*Douglas, supra*, 20 Cal.4th at p. 91.)

Appellant failed to appeal within 60 days from the trial court's order placing him on probation on April 30, 2008. We therefore lack jurisdiction to review the proceedings leading up to and including appellant's change of plea. Our review is limited to the

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<sup>1</sup> Unless otherwise indicated, all statutory references are to the Penal Code.

subsequent victim restitution order made on March 30, 2009. Appellant's trial counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).

### **FACTS**

Restitution hearings occurred on March 2, 2009 and March 30, 2009. Virginia Patrick testified horse panels she had purchased were stolen in 2004. Patrick received them back within two months after they were stolen. Sixteen galvanized panels secured with metal clamps were stolen. They had not been painted. When the panels were returned, they had been painted different colors.

Patrick paid more than \$2,000 for the panels. They were custom made. Patrick submitted an estimate from a painting company to paint the panels a gray color for \$2,485.

Detective John Dow of the Tulare County Sheriff's Department testified that he was investigating a case involving missing horse panels. When Dow recovered the panels, they were no longer together, and some of the panels had been painted. They had originally not been painted but were a plain galvanized steel.

### **APPELLATE COURT REVIEW**

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende, supra*, 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on September 29, 2009, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

### **DISPOSITION**

The judgment is affirmed.